

# SOUTHERN ENVIRONMENTAL LAW CENTER

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May 23, 2017

## **VIA ELECTRONIC MAIL**

*VIA FOIAonline (foiaonline.regulations.gov) and U.S. Mail*

Regional Freedom of Information Officer  
U.S. EPA, Region 4  
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)  
Atlanta, GA 30303-8960

**Re: Freedom of Information Act Request and Fee Waiver Request re: coal ash pond dewatering plans and activities in Georgia**

Dear Sir or Madam:

This is a request for records in the custody of the United States Environmental Protection Agency ("EPA") submitted by the Southern Environmental Law Center ("SELC"). SELC is a non-profit, public-interest organization which advocates for, and represents other organizations that also advocate for, among other things, adequate implementation of and compliance with federal environmental protection laws, including the Clean Water Act and the Resource Conservation and Recovery Act.

### **A. Request for Records**

Under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), the SELC requests the following information:

1. All documents containing information about the final closure, draining or dewatering of coal combustion residuals impoundments (or coal ash ponds) in Georgia ("Dewatering"), including but not limited to:
  - a. communications exchanged between Georgia's Environmental Protection Division and EPA and/or communications between Georgia Power Company and EPA regarding Dewatering; and
  - b. external and internal EPA emails, memos, reports, notes or other documents related to, identifying or describing communications set forth in Item No. 1.a. above.

This request is limited to records created, communicated, or received between the dates of January 1, 2016, and the date upon which this request is processed.

This request is further limited to records in the custody or control of any officer or employee of the EPA Region 4 office, or any contractor thereof. The documents we request could possibly be located in the following offices within Region 4, without limitation:

- Water Protection Division
- Resource Conservation and Restoration Division

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic materials, communications, correspondence, emails, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Environmental Protection Agency.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should any documents be withheld, in part or in their entirety, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. See 5 U.S.C. § 552(a)(6)(A)(i).

To the extent that the request records are maintained in a common electronic format, we request that they be provided in that format.

#### **B. Fee Waiver Request**

SELC seeks a fee waiver in connection with this request for records. Fee waivers are to be granted whenever disclosure would serve the public interest (as opposed to a commercial interest) and would contribute significantly to public understanding of government operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). The statute is intended to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers" in the past. *Pederson*, 847 F. Supp. at 855.

Here, the request would serve no commercial interest. SELC, a non-profit public interest organization, lacks any commercial interest in the records, and none of its clients have any such interest. SELC is dedicated to using the power of the law to protect clean air, clean water, and special places throughout the six Southeastern states in which we work: Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Virginia. SELC does not charge its clients for legal advice or representation; instead, SELC provides such advice and representation free of charge within the scope of its mission.

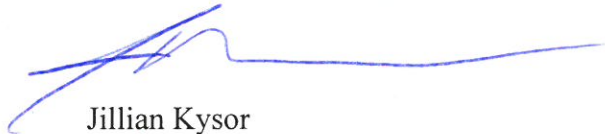
Further, the request would contribute significantly to public understanding of government operations or activities. SELC is a non-profit organization with 30 years of experience disseminating public information regarding EPA regulatory and operations issues. SELC maintains a website that includes both general and topic-specific information regarding the

matters with which SELC is involved. *See* [www.southernenvironment.org](http://www.southernenvironment.org). SELC frequently publishes reports and issues press releases regarding its projects. SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. Lawyers at SELC are interviewed by the media to explain their work and its significance and speak at conferences on particular topics. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

We specifically seek these records in order to increase public understanding about coal ash pond dewatering plans and activities in Georgia. These activities are currently underway at some sites in the state and are impending at several others. A fee waiver will benefit the general public through increased notice and understanding of the coal ash pond dewatering activities in Georgia.

If this request for a fee waiver is denied, please notify me promptly and provide an estimate of the fees associated with the request. If you require any further information or documentation, please do not hesitate to contact me at (404) 521-9900 or [jkysor@selcga.org](mailto:jkysor@selcga.org). Thank you for your time and attention to this request. I look forward to receiving the public records requested.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jillian Kysor', with a long horizontal flourish extending to the right.

Jillian Kysor  
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